

SENATE BILL 2335
By Cooper

AN ACT to amend Tennessee Code Annotated, Title 45, relative to the "Non-profit Credit Counseling Services Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 45, is amended by adding sections 2 through 13 of this act as a new chapter thereto.

SECTION 2. This chapter shall be known and may be cited as the "Non-profit Credit Counseling Services Act".

SECTION 3. This act shall not apply to:

- (1) Banks, trust companies, building and savings associations, personal property brokers, credit unions, industrial loan companies, escrow agents or title companies;
- (2) The services of a person licensed to practice law in this state;
- (3) Any transaction in which money or other property is paid through a "joint control agent";
- (4) A merchant-owned credit or creditors association; and
- (5) A certified public accountant (CPA), when services are rendered in the course of such person's practice as a certified public accountant and fees for such services are not in excess of those provided in this act.

SECTION 4. As used in this act, unless the context otherwise requires:

- (1) "Commissioner" means the commissioner of financial institutions or the commissioner's designee;
- (2) "Debt management plan" means a program in which money is received from a consumer by the agency for the purpose of distributing that money to one (1) or more creditors of the consumer in full or partial payment of the consumer's obligations;

(3) "Credit counseling service" means a person, firm or corporation that provides debt management plan services to consumers, usually for a fee, contribution or other consideration. Credit counseling services do not include:

(A) Supervised financial institutions;

(B) Supervised lenders; or

(C) People admitted to practice law in this state, except to the extent that debt management services constitute the exclusive activity of the attorney;

(4) "Non-profit organization" means an organization that is exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code;

(5) "Person" means an individual or an organization;

(6) "Supervised financial organization" means a financial institution that is regulated under the laws of this state; and

(7) "Supervised lender" means a lender that is regulated under the laws of this state.

SECTION 5. This act is intended to apply to all persons who initiate debt management plans for residents of this state.

SECTION 6. Each person providing debt management plan services to the residents of Tennessee shall be required to register with the commissioner. As a condition of receiving registration within the state, each potential registrant shall provide evidence that such registrant has:

(1) Non-profit status as determined by being designated under the United States Internal Revenue Code as Section 501(c)(3);

(2) Proof of a separate trust account with a FDIC-insured financial institution for the handling of client funds;

(3) Proof of counselor certification through a bona fide third-party certification provider that demonstrates the competence of counselors providing consumer assistance;

(4) A board of directors, a majority of which does not include individuals for whom such a position could pose a conflict with the mission of the organization, such as

creditors and creditors' representatives; bankruptcy attorneys; and others who would have a direct stake in the outcome of the counseling process. The board should have a working majority that is not composed of officers of the company or their relatives;

(5) A plan to keep the cost to the consumer for debt management plan services as low as possible. In no event should the cost to the consumer, including voluntary contributions, exceed seventy-five dollars (\$75.00) to begin such a program or fifty dollars (\$50.00) per month to maintain the program. No person should be denied access to a debt management plan because of an unwillingness or inability to pay a fee;

(6) Agency accreditation provided by a bona fide third-party accreditation body such as the International Standards Organization (ISO) or the Council on Accreditation (COA). Such accreditation should include sector certification that ensures compliance to industry standards and best practices;

(7) An appropriate bond running to the favor of the department of financial institutions that oversees credit counseling, in proportion to the number of persons served; and

(8) Evidence that it is or shall be audited annually by an independent certified public accountant, with such audits taking place within six (6) months of the close of the agency's fiscal year.

SECTION 7.

(a) All debt management plans must be evidenced by an agreement between the credit counseling agency and the consumer, and be clearly acknowledged by both parties. A copy of the agreement must be provided to the consumer.

(b) All debt management plan agreements must contain:

(1) The name and address of both the consumer and the credit counseling agency;

(2) A full description of all services to be performed for the consumer;

(3) A clear indication of the costs to the consumer, including contributions or fees, highlighted in bold type;

(4) A statement that the agreement can be terminated for any reason by the consumer and that the consumer has no obligation to continue the arrangement unless satisfied with the services provided;

(5) An indication of how to resolve disputes under the agreement; and

(6) A complete list of the consumer's and agency's obligations that are subject to the agreement.

SECTION 8. A credit counseling agency shall provide each consumer enrolled in a debt management plan with reports accounting for the funds received from the consumer for payment to the consumer's creditors and disbursements made to each such creditor on the consumer's behalf since the last report. The credit counseling agency shall provide such reports at least on a quarterly basis.

SECTION 9. Credit counseling agencies may not:

(1) Purchase any debt or obligation of a consumer;

(2) Lend money or provide credit to any consumer;

(3) Obtain a mortgage or any other security interest in property of a consumer;

(4) Operate as a debt collector; or

(5) Structure an agreement for the consumer that, at the conclusion of the debt management plan, would result in negative amortization of any of the consumer's obligations to creditors.

SECTION 10. A credit-counseling agency may not engage in false or misleading advertising concerning the terms or conditions of any service or assistance offered.

SECTION 11.

(a) A credit-counseling agency that violates any provision of this act is subject to an enforcement action. Such enforcement action may take place after notice and hearing, a cease and desist order from the commissioner; a civil action by the aggrieved consumer; or after the commissioner becoming aware of violations of this act.

(b) The following enforcement actions may be taken by the commissioner against a credit-counseling agency for violations of any provision of this act or any rules promulgated by the commissioner pursuant to this act:

(1) When, in the opinion of the commissioner, immediate action is required to protect the public interest, a cease and desist order may be issued without notice. In such cases, the commissioner shall make a hearing available on an expedited basis in order that the offending credit-counseling agency have the opportunity to present its position;

(2) After notice of hearings, forfeiture of such portion of the required bond as proportionately may make the aggrieved parties whole may be required;

(3) A civil action by the commissioner through the office of attorney general and reporter may be initiated; or

(4) Revocation, suspension or nonrenewal of the credit counseling registration.

SECTION 12. After notice and hearing, the commissioner may suspend or revoke a registration for any of the following:

(1) A fact or condition exists that, if it had existed at the time when the registrant applied for application, would have been grounds for denying the application.

(2) The registrant knowingly violates a material provision of this section or rule.

(3) The registrant is insolvent.

(4) The registrant refuses to allow the commissioner to make an examination as authorized by this section.

(5) The registrant fails to reply within a reasonable time and in an appropriate manner to communications from the commissioner.

SECTION 13. The commissioner is authorized to promulgate rules and regulations pursuant to title 4, chapter 5, to implement the provisions of this act.

SECTION 14. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2005, the public welfare requiring it.